

Appl. No. 09/814,260  
Amdt. Dated 7/7/2005  
Office Action mailed 4/7/2005

### REMARKS

Claims 72, 77-83, 118-125, and 130-137 are indicated to recite allowable subject matter. Applicants greatly appreciate the recognition of patentable subject matter in the present application.

Applicants hereby add new claims 139-147 and cancel claims 104 and 127. Accordingly, claims 68-72, 74-95, 103, 105-106, 118-126 and 128-147 are pending in the present application.

Claims 126-129 are objected to. Claim 92 stands rejected under 35 USC 112, second paragraph, for indefiniteness. Claims 103-104, 106, 126-129, and 138 stand rejected under 35 USC 102(a) for anticipation by U.S. Patent No. 5,791,970 to Yueh. Claims 68-71, 74-76, 84-91, 93-95, 105, and 138 stand rejected under 35 USC 103(a) for obviousness over Yueh.

Applicants respectfully traverse the rejections and urge allowance of the pending claims.

Referring to the objection to claims 126-129, Applicants have amended claim 126 as suggested to further the prosecution of the present application. Applicants request withdrawal of the objection to the claims.

Referring to the indefiniteness rejection of claim 92 and without admitting to the propriety of the rejection, Applicants have amended claim 92 to further the prosecution of the application. Applicants respectfully submit claim 92 is understood by one of skill in the art and is definite. The amendments made herein now more positively express limitations

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which were previously inherent in such claim(s), and accordingly are not for the purpose of narrowing and do not effectively narrow the scope of any claim.

Referring to the obviousness rejection of the claims, Applicants respectfully submit that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See, e.g., MPEP §2143 (8<sup>th</sup> ed., rev. 2). Applicants respectfully submit the Office has failed to establish proper *prima facie* rejections of the claims for at least the following reasons. Applicants respectfully submit positively recited limitations of the claims are not disclosed nor suggested by the prior art and the claims are allowable for at least this reason.

More specifically, the method of claim 68 recites *monitoring turbidity of the process fluid*. Yueh is void of any monitoring of turbidity of a process fluid as positively claimed and claim 68 is allowable for at least this reason. Applicants have electronically searched Yueh and have failed to uncover any reference to turbidity or teachings regarding monitoring turbidity of the process fluid as claimed. Further, sensor 31 is disclosed at col. 3, lines 35+ of Yueh as being a *particle size sensor*. Monitoring of *particle size* may in no fair interpretation be considered to teach or suggest monitoring turbidity. Positively-recited limitations of dependent claim 68 are not disclosed nor suggested by the prior art and claim

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68 is allowable for at least this reason.

The claims which depend from independent claim 68 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Referring to independent claim 87, the Office relies upon inherency in formulating the 103 rejection. Applicants respectfully submit the reliance is misplaced. More specifically, the Office *must provide* a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly *inherent characteristics necessarily flow from the teachings of the applied prior art*. *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). The Office has failed to provide a basis in fact or technical reasoning as to why it is necessary for a sampling system to provide a sample in a substantially static state or why such necessarily flows from the teachings of Yueh. To the contrary, Yueh discloses an *agitator within the tank 29 to agitate the slurry which is monitored by sensor 31* and Applicants have been unable to locate any teachings of slurry therein being provided in a substantially static state. Further, the contents of the tank 29 may not be fairly interpreted to include a sample of the process fluid but are rather the main supply of the process fluid itself. The reliance upon inherency is misplaced and claim 87 is allowable for at least this reason.

The claims which depend from independent claim 87 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

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Referring to the anticipation rejection of claim 103, The **identical invention** must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989. The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990. Claim 103 recites monitoring *turbidity* of the process fluid. Applicants have failed to uncover any teachings in Yueh regarding monitoring turbidity of a process fluid as claimed. Monitoring of the size of particles fails to disclose or suggest monitoring turbidity. In view of the above, Applicants respectfully submit that Yueh fails to disclose the method in as complete detail as is contained in claim 103 and Yueh fails to disclose or suggest at least the above-noted limitations arranged as positively defined by claim 103. Applicants respectfully request allowance of claim 103 in the next Action for at least these reasons.

The claims which depend from independent claim 103 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Referring to claim 118, Applicants have added the indicated amendments for clarity.

Referring to independent claim 126, Applicants have failed to uncover any teachings in Yueh regarding monitoring turbidity of a process fluid as claimed. Monitoring of the size of particles fails to disclose or suggest monitoring turbidity. In view of the above, Applicants respectfully submit that Yueh fails to disclose the method in as complete detail as is contained in claim 126 and Yueh fails to disclose or suggest at least the above-noted limitations arranged as positively defined by claim 126. Applicants respectfully request

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allowance of claim 126 in the next Action for at least these reasons.

The claims which depend from independent claim 126 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Support for the new claims and amendments are provided at least at Figs. 12 and 17-24 and the associated teachings of the originally-filed specification.

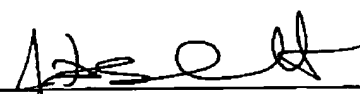
Applicants file a supplemental Information Disclosure Statement herewith.

Applicants respectfully request allowance of all pending claims.

The Examiner is requested to phone the undersigned if the Examiner believes such would facilitate prosecution of the present application. The undersigned is available for telephone consultation at any time during normal business hours (Pacific Time Zone).

Respectfully submitted,

Dated: 7/7/05

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